

Bureau of Workers' Disability Compensation

Funds Administration Overview

April 2000



Department of

Consumer & Industry Services

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John Engler, Governor

State of Michigan

Kathleen M. Wilbur, Director

Department of Consumer & Industry Services

Craig R. Petersen, Director

Bureau of Workers' Disability Compensation

Dennis S. Morrill, Funds Administrator

Bureau of Workers' Disability Compensation, Funds Administration

Funds Administration

Second Injury Fund

Silicosis, Dust Disease & Logging Industry Compensation Fund

Self-Insurers' Security Fund

Uninsured Employers' Security Fund

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Executive Summary

The Funds Administration, consisting of the Second Injury Fund; Silicosis, Dust Disease and Logging Industry Compensation Fund; and Self-Insurers' Security Fund, is managed by a board of three trustees. Two trustees are appointed by the governor with the advice and consent of the senate. One represents employers authorized to act as self-insurers in Michigan. Edward Gallagher of DaimlerChrysler currently fills that position. The second represents the insurance industry, and that appointment is held by Richard Zapala of the Accident Fund Company. The third trustee is the Director of the Bureau of Workers' Disability Compensation, Craig Petersen.

The Funds Administration is also responsible for the administration of the Uninsured Employers' Security Fund. This section of the Workers' Disability Compensation Act is repealed June 1, 2000.

Legal advice and representation are secured from the Workers' Compensation Division of the Office of the Attorney General. In addition to the Assistant Attorney General in Charge, Ray Cardew, there are four full-time Assistant Attorneys General and 56 Special Assistant Attorneys General who handle the trial and appellate work.

All money used to operate the Second Injury Fund, the Silicosis, Dust Disease and Logging Industry Compensation Fund, and the Self-Insurers' Security Fund, comes from assessments against the total compensation payments and redemptions, exclusive of medical, funeral and the rehabilitation benefits paid by insurance companies and self-insured employers. Each fund makes a separate assessment. The Second Injury Fund and Silicosis, Dust Disease and Logging Industry Compensation Fund assessments are paid by insurance companies and self-insured employers. The Self-Insurers' Security Fund assessments are made only against private self-insured employers. Funding for the Uninsured Employers' Security Fund came from the proceeds of the sale of the Accident Fund Company to Blue Cross/Blue Shield of Michigan. Medical Benefit reimbursement is funded through the State of Michigan's General Fund. The assessment percentage for the Second Injury Fund for year 2000 is .01469, which will collect approximately \$13,860,000 in revenue. There is no assessment required for the Silicosis, Dust Disease and Logging Industry Compensation Fund this year. The assessment percentage for the Self-Insurers' Security Fund is .00454. This will produce revenues of approximately \$1,660,000.

If we were to compare the Funds Administration as a whole against both private and public self-insured employers and the insurance industry on total compensation payments made in indemnity and redemptions, the Funds would rank fourth behind the big three auto makers for 1999 (out of 726 private self-insured employers). The Funds would rank second to all public employers (197) and third against all insurance companies (354) who write workers' compensation insurance in the State of Michigan.

Jack Wheatley, former Director of the Bureau of Workers' Disability Compensation, established a committee to review and evaluate the various funds within the Funds Administration and to make recommendations regarding the continuation, elimination or their modification. On January 31, 2000, this committee drafted a comprehensive report which recommended discontinuance of some fund provisions, and continuance with modification of others. This report can be obtained by going to the bureau's web site on our What's New page at <http://www.cis.state.mi.us/wkrcomp/online.htm>. If you do not have access to the Internet, a copy of this report can be obtained by contacting the Director's Office of the Bureau of Workers' Disability Compensation.

I hope you find this overview informative, and if you have any questions please call one of the administrators listed on page 3.

Dennis S. Morrill

Trustees and Staff

<u>Craig R. Petersen, Trustee</u>	Director, Bureau of Workers' Disability Compensation
<u>Edward L. Gallagher, Jr., Trustee</u>	Supplier Liaison & Plant Operation Manager, DaimlerChrysler, representing self-insured employers
<u>Richard F. Zapala, Trustee</u>	Assistant General Counsel, Accident Fund Company, representing the insurance industry

<u>Dennis S. Morrill</u>	Funds Administrator	(517) 241-8929
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Ellen Feldpausch	Program Specialist	(517) 241-8945
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James Messenger	Senior Claims Examiner	(517) 241-8948
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- Handles:
1. Total and Permanent Disability Provision of the Second Injury Fund - Sections 351, 361 (3), 521
 2. Two Years of Continuous Disability Provision of the Second Injury Fund - Section 356(1)
 3. 70% Reimbursement Provision of the Second Injury Fund - Section 862(1)
 4. Dual Employment Provision of the Second Injury Fund - Section 372
 5. Uninsured Employers' Security Fund - Section 532
 6. Medical Benefit Reimbursement Fund - Section 862(2)

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George Chipman	Program Specialist	(517) 241-8931
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Cheryl Moyer	Senior Claims Examiner	(517) 241-8935
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- Handles:
1. Self-Insurers' Security Fund - Chapter 5
 2. Vocationally Handicapped Provision of the Second Injury Fund - Chapter 9
 3. Uninsured Employers Security Fund - Section 532

<u>Janice Remer</u>	Assistant Funds Administrator	(517) 241-8940
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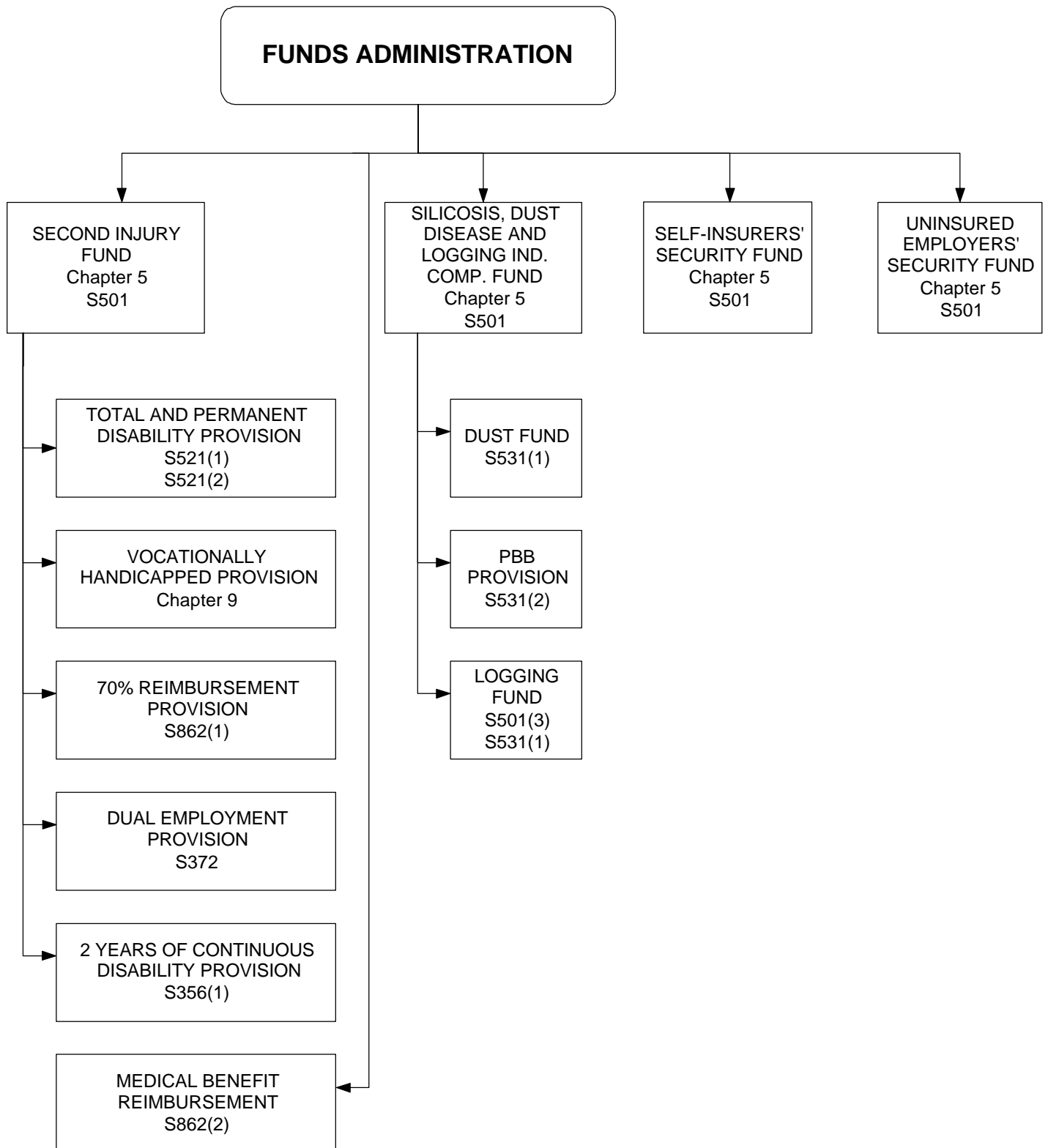
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Mark Long	Program Specialist	(517) 241-8939
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- Handles:
1. Dual Employment Provision of the Second Injury Fund - Section 372
 2. Silicosis, Dust Disease and Logging Industry Compensation Fund - Chapter 5
 3. Uninsured Employers' Security Fund - Section 532

State Funds Handled by the Funds Administration



Second Injury Fund

The Second Injury Fund has five distinct responsibilities under the Workers' Disability Compensation Act:

1. Total and Permanent Disability Provision
2. Vocationally Handicapped Provision
3. Dual Employment Provision
4. Seventy Percent Reimbursement Provision
5. Two Years of Continuous Disability Provision

Total and Permanent Disability Provision

Total and permanent disability benefits are provided to individuals who meet the definition of total and permanent disability under the terms of the Workers' Disability Compensation Act.

Sequential losses (also called 8A cases) - 521(1) - If there is a prior loss of hand, arm, foot, leg or eye, followed by the compensable loss of one or more of the above, the fund assumes the payment of the basic weekly benefit after the carrier has paid for the second specific loss.

Differential benefits - 521(2) - Benefits paid by the Second Injury Fund to a totally and permanently disabled employee. The differential benefit is the difference between the statutory weekly rate payable by the employer or insurance carrier for the date of injury and the weekly benefit rate now provided by the statute.

Statutory benefit levels

- a. Eighty percent (80%) of employee's after-tax weekly wage - Section 351(1)
- b. Two-thirds (2/3) of the employee's average weekly wage - Section 351(3) (note: cannot exceed the 1981 maximum benefit level)
- c. Maximum - 90% of the state's average weekly wage - Section 355(1)
- d. Minimum - 25% of the state's average weekly wage - Section 356(3)
- e. Fifty percent (50%) of the state's average weekly wage - applicable in cases with dates of injury before 7/1/68 - Section 351(2)
- f. Two-thirds (2/3) of the state's average weekly wage, inclusive of the value of discontinued fringe benefits, applicable in cases with dates of injury after 12/31/81 - Section 371(2)

Factors needed to determine the Second Injury Fund Total and Permanent Disability benefit rate and accrued compensation.

- a. Date of injury
- b. Average weekly wage
- c. Value of discontinued fringe benefits
- d. Dependents
- e. Income tax filing status
- f. Date of birth of employee and dependents
- g. Carrier's weekly benefit rates for the period of fund payment
- h. Date of total and permanent disability
- i. Date of first notice (for application of the two-year back rule in cases with dates of injury after 6/30/68)
- j. Supplemental benefit rate, period and amount paid in cases with dates of injury from 9/1/65 through 12/31/79

Total and permanent differential benefits may be paid directly to the employee by the fund if the carrier is unable to pay, has no separate obligation to pay, or has redeemed liability. This provision of the fund pays and/or reimburses weekly differential benefits only. Reimbursements are made to the carrier every six months. Redemption by an employer or insurance carrier before an admission or adjudication of liability for permanent and total disability extinguishes an employee's claim for benefits from the Second Injury Fund. When an employee and the employer or insurance carrier redeem the employer's liability after all parties concede permanent and total disability or there is an adjudication of permanent and total disability, the employee's claim for benefits from the second injury fund can continue. Once it is agreed or determined by final decision that an employee is permanently and totally disabled, redemption by the employer or insurance carrier will not affect the responsibility of the Second Injury Fund to pay benefits to the claimant. The fund will pay weekly benefits to the employee for as long as the employee is permanently and totally disabled as defined in the workers' compensation statute. The Second Injury Fund will consider redemption after all parties have conceded or there has been an adjudication regarding permanent and total disability. The fund may redeem in conjunction with, or separate from the employer or insurance carrier.

Vocationally Handicapped Provision

This program encourages Michigan employers to hire individuals with medically identifiable impairments of the back or heart, or who are subject to epilepsy or diabetes when these impairments cause a substantial obstacle to employment. The Department of Career Development, Michigan Rehabilitation Services and the Second Injury Fund jointly administer this program.

In the event of a work-related injury, the Second Injury Fund will either reimburse or pay direct workers' compensation benefit obligations beyond 52 weeks after the date of injury when all provisions of Chapter 9 have been met. The Second Injury Fund is also responsible for vocational rehabilitation costs from the date of injury.

An employer or carrier must complete the certification process in order to receive the protection of Chapter 9. Employer certification is invalid if the person was employed with the same employer within 52 weeks of issuance of the certificate. A certification is invalid if the employer certification is not filed with the Michigan Rehabilitation Services within 60 days after the first day of employment, or before an injury for which benefits are payable under the Act. The certificate is also invalid if the person was employed at the time of issuance. Very few employer certifications have resulted in claims against the fund.

Dual Employment Provision

An injured employee, engaged in more than one employment at the time of injury is paid weekly benefits based on wages earned in all **employments covered** by the Michigan Workers' Disability Compensation Act. This provision applies to dates of injury on or after January 1, 1982.

Examples of dual employment situations **not** covered:

- a. Federal employment (Excluding military members of the Michigan National Guard).
- b. The place of injury employment is covered under the Michigan Act, but the non-injury employment is not covered by the Act.
- c. Sole proprietorships, self-employment, and independent contractors.
- d. Partnerships or corporations where the owner/employee or other family members have excluded themselves from workers' compensation coverage.
- e. Domestic workers.
- f. Both employers are agricultural.

In calculating the employee's benefit rate, the average weekly wage for each employer is calculated separately, in accordance with Section 372, and then combined. If the employment which caused the personal injury or death provides 80% or less of the employee's total average weekly wage, the fund will reimburse its apportionment share based on the ratio of the employee's average weekly wage at the non-injury employer to the total average weekly wage. If the place of injury or death provided more than 80% of the total average wage, there will be no reimbursement from the fund. However, the employer is responsible for compensation based on the total average weekly wage.

Only wages reported to the IRS may be considered in determining the apportionment percentage. The fund has no liability if the earnings were not reported. Employees must also be disabled and suffer a wage-loss from the non-injury job.

This provision does not apply to volunteer public employees entitled to benefits under section 161. If both jobs caused the disability the fund has no liability to reimburse.

This provision reimburses the carrier for weekly benefits. This provision does not reimburse uninsured employers and has no obligation to pay employee directly. On continuing disability cases, reimbursement should be requested quarterly on the Form 112, Application for Reimbursement.

70% Reimbursement Provision

Defendants who appeal an open award by a workers' disability compensation magistrate must pay 70% of the awarded weekly compensation benefits while the case is on appeal. If the award of benefits is later rescinded or reduced by final determination, excess weekly benefit payments are reimbursable from the Second Injury Fund.

Seventy percent (70%) benefits are payable from the mailed date of the magistrate decision. Weekly benefits should be paid in accordance with the Act (i.e., apply age reductions, coordination, dependency changes, partial, etc.). When there is a final award, credit should be taken or 70% benefits paid against what is due by final order. If more money has been paid than owed, the excess is reimbursed by the fund. If less has been paid than owed, the balance is due with interest. Payments by one carrier must be taken as a credit if another carrier is responsible.

Two Years of Continuous Disability Provision

The statute provides that if a person is injured on or after January 1, 1982, and at the time of personal injury is entitled to a compensation rate that is less than 50% of the State average weekly wage, after two years of continuous disability, the employee may petition for an increase in the rate of compensation. The employee may present evidence, that by virtue of the employee's age, education, training, experience or other documented evidence, the employee's earnings would have been expected to increase. Factors which affect all employees in a similar manner, such as inflation, are not to be considered when determining whether a disabled employee qualifies for a rate increase. A magistrate may order an adjustment of the compensation rate up to 50% of the State's average weekly wage for the year in which the employee's injury occurred. The amount of the adjustment to the compensation rate is reimbursable by the Second Injury Fund. Only one adjustment is made for an employee and the adjustment is made from the date the petition was filed. This provision does not apply to partially disabled workers.

Redemption by a carrier before an admission of or an adjudication regarding the employer's liability extinguishes both the employee's right to seek a rate increase under the two years of continuous disability provision and the employer's right to seek reimbursement from the fund. Once it is agreed or determined by final decision that an employee is entitled to a rate increase after two years of continuous disability, the carrier can redeem its liability independent of the second injury fund, however, the carrier must continue to pay the two years of continuous disability benefit to the employee and seek reimbursement from the fund. The fund can settle with an employee, independent of the carrier, while the two years of continuous disability case is in litigation or after an admission or adjudication of fund liability.

Silicosis, Dust Disease and Logging Industry Compensation Fund

The Silicosis, Dust Disease and Logging Industry Compensation Fund has three separate types of responsibilities:

1. Silicosis and Dust Disease Fund.
2. Logging Industry Compensation Fund.
3. PBB Provisions.

For claims with dates of injury from May 1, 1966, through June 30, 1985, reimbursement occurs after the employee has been paid more than \$12,500. Claims with dates of injury on or after July 1, 1985, carriers will pay \$25,000 or 104 weeks of benefits, whichever is greater, before reimbursement is due. The fund reimburses benefits at the coordinated rate and the carrier must actually pay the threshold amount before being entitled to reimbursement. The fund has no reimbursement liability to a carrier for overpayments that result from the carrier's failure to reduce the rate in accordance with the statute.

The fund does not reimburse medical, burial expense, rehabilitation costs, penalty or interest payments.

It is the employer that adds the Silicosis, Dust Disease and Logging Industry Compensation Fund to a litigated case. The employee cannot add the fund.

The fund has the right to reimbursement and credit from third party recoveries pursuant to MCLA 428.827. Carriers who obtain third party reimbursement, must repay those monies before reimbursement resumes from the fund. The carrier is expected to avail itself of its right to reimbursement and where it has failed to do so will be held accountable for monies it was entitled to recoup (*Nelligan v Gibson Insulation*).

Silicosis and Dust Disease Fund

This fund reimburses carriers who pay weekly workers' compensation benefits to individuals who are disabled or die from silicosis, asbestosis, or other dust diseases. Claims usually come from the foundry industry, grinding exposure or exposure to asbestos. If the disability or death is caused by cancer, the employer must prove a threat to industry (*Dvorak v Faulkner Construction*).

Liability may be apportioned between a reimbursable lung condition and other occupational conditions and/or non-occupational conditions. If the date of injury is after June 30, 1985, it involves a two-step process to compute the carrier's threshold when the case is apportioned between a reimbursable lung condition and other compensable causes. First, the threshold of 104 weeks or \$25,000 is determined using the reimbursable portion of the benefit rate. That amount is divided by the percentage to be reimbursed by the fund (*Abbey v CWC*).

Logging Industry Compensation Fund

This fund reimburses carriers who pay weekly workers' compensation benefits to individuals who sustained personal injury or death while being employed in the logging industry, specifically employment described in the workers' compensation and employer's liability insurance manual entitled, "logging or lumbering and driver's code no. 2702," effective January 1, 1982. The employee must have been doing an activity enumerated in Code No. 2702 when injured (*Bancroft v Maple Rapids Lumber Mill*).

PBB Provisions

The fund reimburses carriers who pay weekly benefits as a result of disability or death caused by, contributed to, or aggravated by exposure to polybrominated biphenyl (PBB) if exposure occurred before July 24, 1979, by an employer located in Michigan engaged in the manufacture of PBB.

Self-Insurers' Security Fund

The Self-Insurers' Security Fund provides workers' compensation benefits to employees of bankrupt self-insured employers who become insolvent after November 15, 1971. If a private self-insured employer becomes insolvent, payments are made from the Self-Insurers' Security Fund when three conditions are met:

1. The private self-insured employer is insolvent,
2. Employee requests payment of benefits from the Funds Administrator or files a petition with the Bureau of Workers' Disability Compensation, and
3. The insolvent private self-insured employer is unable to continue payments.

The fund pays from the date all three conditions are met. No payments for benefits owed before that date are paid by the fund. The fund does not pay if the employer is uninsured. Public employers are not covered. In the event of a bankruptcy, the employee should also file a claim in bankruptcy court for any workers' compensation benefits the fund cannot pay.

The Self-Insurers' Security Fund, when triggered, may utilize financial guarantees posted with the bureau to pay claims @ 408.43q). In addition, both specific and aggregate excess liability insurance policies continue to have responsibility for payments when retention levels have been met @ 408.43k).

Uninsured Employers' Security Fund

The Uninsured Employers' Security Fund became the responsibility of the Trustees with the sale of the Accident Fund of Michigan on December 27, 1994. Senate Bill 570 (Public Act 357) became effective July 1, 1996, which activated this fund. The legislation creating this fund has a sunset date of June 1, 2000.

The Uninsured Employers' Security Fund provides benefits to an employee or dependents of a deceased employee that are unable to be received from the employer because the employer failed to secure the payment of workers' compensation coverage as required under section 611 of the Act. Said employer is an "uninsured employer." Money in this fund is only to be used for injuries occurring on or after June 29, 1990, through June 30, 1996.

If an uninsured employer is found to be liable to pay benefits and fails to pay those benefits, the uninsured employer's security fund shall pay the benefits. The fund shall pay wage loss benefits and medical benefits only by redemption to an employee or dependents of a deceased employee. If determination is less than the benefits to which the employee would otherwise be entitled under this act, the determination shall not constitute a reduction of the statutory benefits to which the employee is otherwise entitled.

For injuries occurring on or after June 29, 1990, through June 30, 1996, an uninsured employer is liable to the fund for both of the following:

- a. An amount equal to the benefits paid to an employee by the fund and an additional three times this amount.
- b. An amount equal to three times any actual and reasonable expenses incurred by the fund in processing the claim.

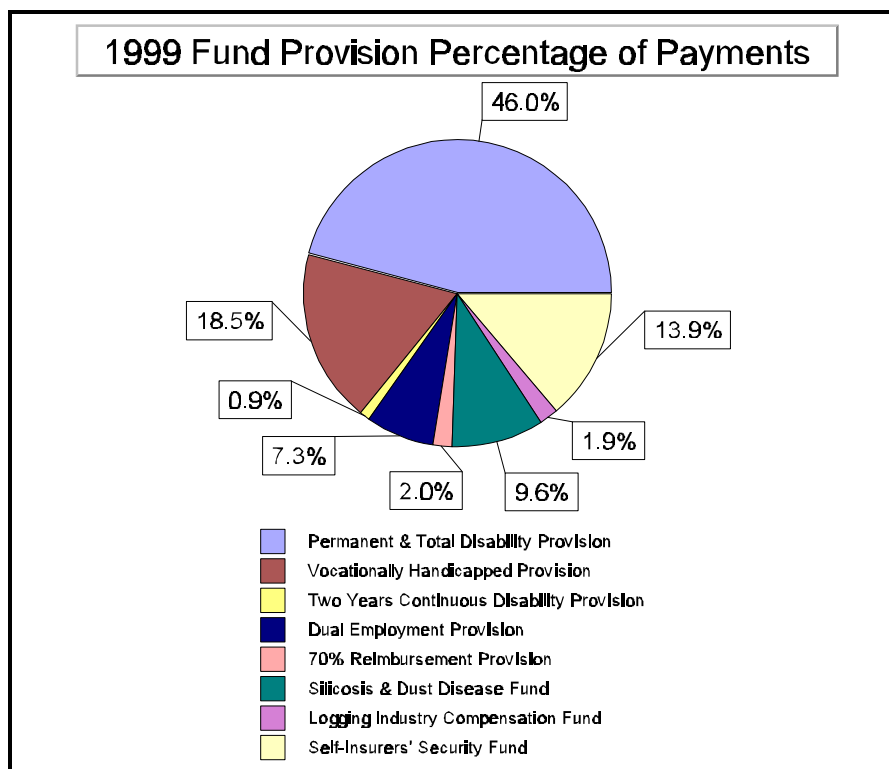
If reimbursement is obtained from an uninsured employer and less than 100% of the benefits due an employee were paid by the fund, the fund shall pay to the employee or dependents of a deceased employee the difference between the amount paid and the level of benefits to which the employee or dependents of the deceased employee would otherwise be entitled.

A total of 1,872 cases were opened against this fund since 1996. Only 7 claims remain open as of May 1, 2000. Complete details of this fund as to disposition of cases, collection against uninsured employers and the financial statement will be shown in the 2001 overview. The beginning fund balance in 1996 was \$23,293,176.88. The fund balance through April 30, 2000 (not including interest for the month of April) is \$23,869,415.38. Total claim payments and costs total \$5,878,899.84 through April 30, 2000.

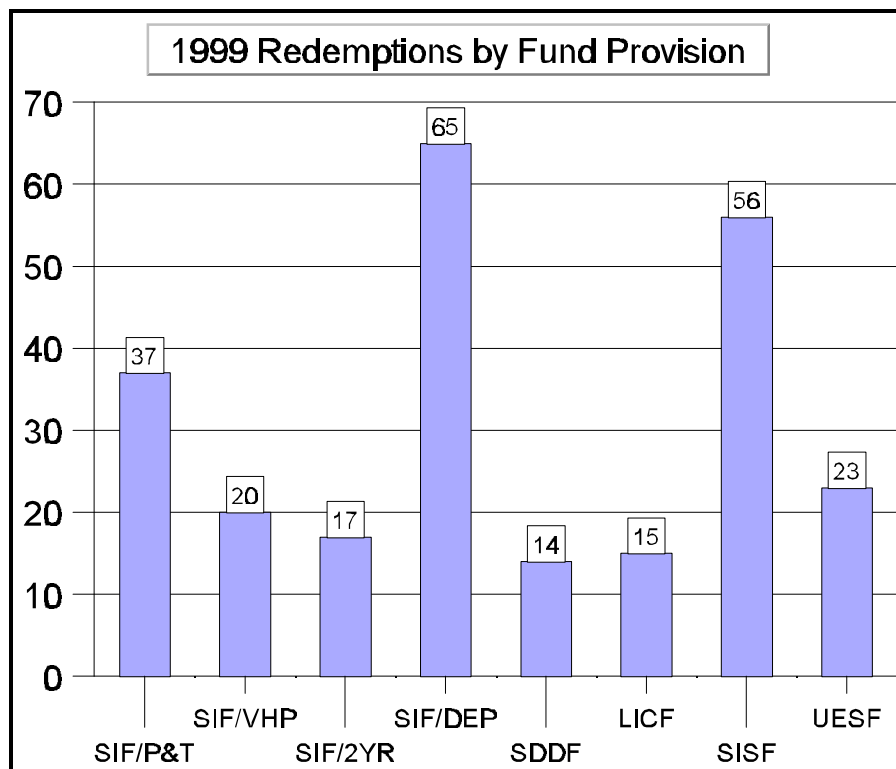
Medical Benefit Reimbursement

Reimbursement of medical benefits is a program administered within the Funds Administration. The objective of this program is to administer and provide reimbursement to the carrier or self-insurer for medical benefits paid to the claimant between the date of the magistrate's award and the date of the final determination of the appeal. If the final determination of the appeal has reversed the medical benefit awarded in the magistrate's decision, then reimbursement for payments would be processed and administered by the bureau and paid from the general fund of the state. Once the final appeal process has been completed, the bureau is required to provide a thorough review of any application for reimbursement submitted by the carrier or self-insurer. The staff must examine copies of the original medical bills and all final decisions (magistrate or appellate orders) to determine that reimbursement for medical costs is appropriate. After ensuring specific criteria and provisions of Section 862(2) and Rule 408.32a are met, then the reimbursement application is processed by the program staff and the department's finance division.

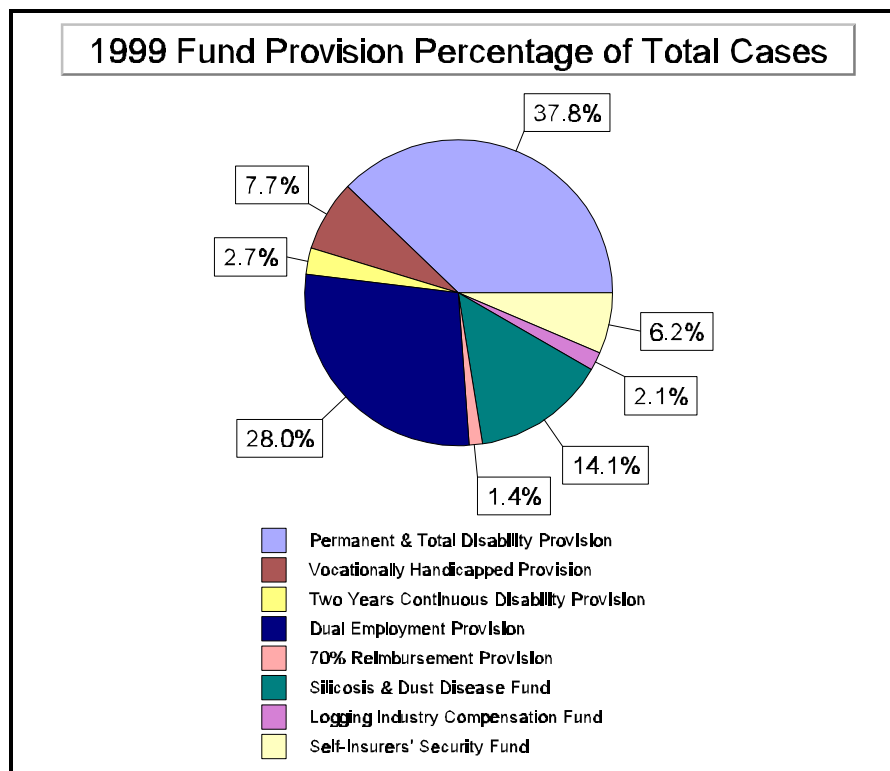
1999 Calendar Year Payments		
Second Injury Fund		\$17,457,817.78
Permanent & Total Disability	\$10,741,519.51	
Vocationally Handicapped Provision	\$4,313,577.90	
Dual Employment Provision	\$1,714,431.48	
70% Reimbursement Provision	\$477,100.23	
Two Years Continuous Disability Provision	\$211,188.66	
Silicosis, Dust Disease and Logging Industry Compensation Fund		\$2,668,193.55
Silicosis and Dust Disease Fund	\$2,235,837.06	
Logging Industry Compensation Fund	\$432,356.49	
PBB	\$0.00	
Self-Insurers' Security Fund		\$3,238,788.51
This represents all payments after reimbursements from the Second Injury Fund; the Silicosis, Dust Disease and Logging Industry Compensation Fund; the Compensation Supplement Fund; and excess carriers.		
Uninsured Employers' Security Fund		\$535,188.98
Total of all fund payments		\$23,899,988.82



1999 Redemption Payments *These payments are included in the calendar year payment summary		
Fund/Provision	Claims Redeemed	Total Payments
Second Injury Fund		
Permanent & Total Disability	37	\$694,703.27
Vocationally Handicapped Provision	20	\$1,048,139.12
Dual Employment Provision	65	\$654,709.08
70% Reimbursement Provision	0	\$0.00
Two Years Continuous Disability Provision	17	\$149,000.00
Second Injury Fund Total	139	\$2,546,551.47
Silicosis, Dust Disease and Logging Industry Compensation Fund		
Silicosis and Dust Disease Fund	14	\$213,075.00
Logging Industry Compensation Fund	15	\$73,000.00
SDDF/LICF Total	29	\$286,075.00
Self-Insurers' Security Fund	56	\$2,087,060.65
Uninsured Employers' Security Fund	23	\$535,188.98
Fund Totals	247	\$5,454,876.10



1999 Case Activity Total					
	Payment/ Reimbursement	Non- Litigation	Litigation	Appeals	Total
1. Second Injury Fund					
a. P&T Provision	1,538	11	323	60	1,932
b. Dual Emp. Prov.	287	483	400	49	1,249
c. Two Yrs. Prov.	31	0	93	16	140
d. VHP Prov.	226	106	52	9	393
e. 70% Prov.	24	37	5	3	69
2. Sil.Dust/Logging					
a. Sil. & Dust Dis.	420	119	102	21	662
b. Logging Fund	42	14	30	6	92
c. PBB	0	0	0	0	0
3. Self-Ins.'Sec. Fund	162	120	31	2	315
Totals	2,730	920	1,036	166	4,852



Vocationally Handicapped Provision of the Second Injury Fund Employer Certification	
Total employer certificates issued through 12/31/99	87,017
Back	63,685
Diabetes	7,313
Epilepsy	8,834
Heart	7,185

2000 Assessments	
Second Injury Fund	\$13,866,175.26
Silicosis, Dust Disease and Logging Industry Compensation Fund	\$0.00
Self-Insurers' Security Fund	\$1,688,846.00

